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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,239	02/18/2004	Jeffrey T. Mauch	10499-596US	2354

570 7590 02/22/2006

AKIN GUMP STRAUSS HAUER & FELD L.L.P.  
ONE COMMERCE SQUARE  
2005 MARKET STREET, SUITE 2200  
PHILADELPHIA, PA 19103

EXAMINER
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PAHNG, JASON Y

ART UNIT	PAPER NUMBER
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3725

DATE MAILED: 02/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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**Office Action Summary**

Application No.

10/781,239

Applicant(s)

MAUCH ET AL.

Examiner

Jason Y. Pahng

Art Unit

3725

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 November 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 16-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 16 and 20-25 is/are rejected.
- 7) ☐ Claim(s) 17-19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| <p>1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br/>Paper No(s)/Mail Date _____.</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)<br/>Paper No(s)/Mail Date. _____.</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</p> <p>6) <input type="checkbox"/> Other: _____.</p> |
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## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16 and 23-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Howard (US 4,397,427).

With regard to claim 16, Howard discloses a food processor including:

1. a top lid wall (16);
2. a feed tube (14);
3. the feed tube (14) including a continuous inner feed surface that defines a feed cavity (volume inside 14);
4. a moveable gate (32) positioned within the feed cavity (volume inside 14);  
and
5. the moveable gate (32) being pivotable (particularly in order to accommodate food shaped in triangular form) within the feed cavity between an open position and a compacting position (Figure 2).

With regard to claim 23, Howard discloses a food pusher (30) being slideable relative to the feed tube (14) in first and second directions (Figure 2). Howard discloses a food pusher (30) which is partially cylindrical (Figure 4). Howard may not disclose a

completely fully cylindrically shaped food pusher, but Howard discloses a generally cylindrically shaped food pusher (Figure 4) in order to match the shape of the matching cylindrical inner wall of the feed tube.

With regard to claim 24, Howard discloses a sub-feed cavity defined by a compacting surface of the movable gate (32) and at least a portion of the inner feed surface of the feed tube (Figure 2).

With regard to claim 25, Howard discloses a food pusher (30) removably positionable in the feed cavity. The food pusher substantially fills the sub-feed cavity when the food pusher is stored in the sub-feed cavity.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 16 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berarducci (US 2,128,792) in view of Sundstrand (US 2,001,075).

With regard to claim 16, Berarducci discloses a nut processor with substantially all of the claimed structure including:

1. a feed tube (14 and 20);
2. the feed tube (14 and 20) including a continuous inner feed surface that defines a feed cavity (volume inside 14 and 20);

3. a moveable gate (17) moves within the feed cavity (volume inside 14 and 20) and pivots within the feed cavity (volume inside 14 and 20); and
4. the moveable gate (17) pivots between an open position (when 17 is not touching food so that there is no compacting pressure on the food) and a compacting position (when 17 is touching food so that there is compacting pressure).

Berarducci discloses a feed tube but does not disclose that it extends from a top lid wall. In a closely related art, Sundstrand discloses a nut processor with a feed tube extending from a top lid wall (8) in order to engage a jar. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to provide Berarducci with a feed tube extending from a top lid wall in order to engage a jar, as taught by Sundstrand.

With regard to claims 20 and 21, Berarducci discloses a torsion spring (19) that biases the moveable gate (17) toward the compacting position.

With regard to claim 22, Berarducci discloses a torsion spring (19) secured at one end to the gate (17) and at a second end to the feed tube (20)

### ***Allowable Subject Matter***

Claims 17-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments with respect to Krishnamurthy and Levin have been considered but are moot in view of the new ground(s) of rejection.

With regard to the Howard reference, Applicant argues that Howard does not disclose a moveable gate which is pivotable (page 7). Howard does not disclose a moveable gate which is pivoted on a hinge. However, Howard's moveable gate is capable of moving along a straight path and also along a curved path. Howard's gate capable of being pivotable when it moves along a curved in order to accommodate a particular shape of food.

With regard to claim 23, Applicant argues that Howard does not disclose a generally cylindrically shaped food pusher because Howard discloses a generally flat food pusher. This is not true. Howard does not disclose a flat or generally flat food pusher. Howard discloses a partially cylindrical food pusher (Figure 4). How can a partially cylindrical food pusher be generally flat? Howard may not disclose a completely fully cylindrically shaped food pusher, but Howard discloses a generally cylindrically shaped food pusher (Figure 4) because Howard discloses at least a partially cylindrically shaped food pusher in order to match the shape of the matching cylindrical inner wall of the feed tube.

With regard to claim 25, Applicant argues that Howard's food pusher is not capable of substantially filling the sub-feed cavity because it is flat due to the arcuate shape of the walls of the feed tube. This is not true. Because Howard's food pusher is cylindrical, Howard's food pusher substantially fills the sub-feed cavity particularly well due to the cylindrical shape of the walls of the feed tube.

**Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

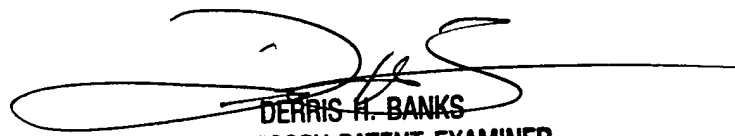
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Y. Pahng whose telephone number is 571 272 4522. The examiner can normally be reached on 9:00 AM - 7:00 PM, Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571 272 4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JYP



**DERRIS H. BANKS**  
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